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UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA
 SAN JOSE DIVISION

RMW

ERIC RUBAKER, *et al.*, individually and on
 behalf of other similarly situated persons,

Plaintiffs,

v.

SPANSION, LLC; SPANSION, INC.,

Defendants.

C09 00842
 Case No. HRL

**COMPLAINT FOR DAMAGES FOR
 VIOLATION OF THE WORKER
 ADJUSTMENT AND RETRAINING
 NOTIFICATION ACT (29 U.S.C. § 2101 et
 seq.; Cal. Labor Code § 1400 et seq.)**

DEMAND FOR JURY TRIAL**CLASS ACTION**

ORIGINAL

1 Plaintiff Eric Rubaker, individually and on behalf of all others similarly situated, for his
2 Complaint against defendants Spansion, LLC and Spansion, Inc., states as follows:

3 **JURISDICTION AND VENUE**

4 1. This Court's jurisdiction is based on 28 U.S.C. § 1331 as well as 29 U.S.C. §§ 2102,
5 2104(a)(5) and California Labor Code § 1404 of the Worker Adjustment and Retraining Notification Act
6 (the United States and California Worker Adjustment and Retraining Notification Acts are referred to
7 herein collectively as "WARN Act" unless otherwise stated) (29 U.S.C. § 2101 *et. seq.*; California Labor
8 Code § 1400 *et. seq.*).

9 2. Venue in this district is proper under 28 U.S.C. § 1391(b) and (c), and section 5(a)(5) of
10 the WARN Act (29 U.S.C. § 2104(a)(5)) because Defendants do business in this district, are
11 headquartered in this district, and the acts constituting the violation of the WARN Act complained of
12 occurred, and the claim arose in, this district.

13 **INTRADISTRICT ASSIGNMENT**

14 3. This case should be assigned to the San Jose Division per Local Rule 3-2(e) because
15 Defendants are headquartered in Santa Clara County and a substantial part of the acts constituting the
16 violation of the WARN Act complained of, occurred, and the claim arose in, Santa Clara County.

17 **PARTIES**

18 4. Plaintiff Eric Rubaker was a full-time employee of Defendants who, in addition to other
19 substantial employee benefits, earned regular compensation and was damaged by Defendants' acts in
20 violation of the WARN Act.

21 5. Defendant Spansion, LLC is a Delaware limited liability company that manufactures
22 computer memory chips and is registered to do business in the state of California.

23 6. Defendant Spansion, Inc. is a Delaware corporation that manufactures computer memory
24 chips and is registered to do business in the state of California.

25 7. Defendants Spansion, LLC and Spansion, Inc., (collectively "Defendants"), are a single
26 employer in that, based on information and belief, they share common ownership, corporate directors
27 and officers, and corporate headquarters in California. Defendants have fully integrated and
28 interdependent business operations and share personnel policies that emanate from a common source.

FACTS

8. Plaintiff was employed full time as a plant maintenance specialist at Defendants' Sunnyvale, California manufacturing facility and corporate headquarters.

9. On or about February 23, 2009, Defendants announced that they would be terminating employees. Plaintiff was terminated and, on information and belief, at least 50 employees were terminated, effective immediately.

10. Plaintiff, and all other similarly situated persons, were terminated by Defendants beginning on or about February 23, 2009, and did not receive the notice required by the WARN Act.

CLASS ACTION ALLEGATIONS

11. Plaintiff brings this action as a class action under Federal Rule of Civil Procedure 23(a), (b)(1) and (3) and the WARN Act (29 U.S.C. § 2104(a)(5); Cal. Labor Code § 1404).

12. Plaintiff brings this action on behalf of himself and all other similarly situated employees. Plaintiff seeks to represent a Class initially defined as: "All of Defendants' employees that were terminated from employment on or about February 23, 2009 or in the 30 days following that date without 60 days advance written notice required by the WARN Act."

13. Plaintiff and class members are "affected employee(s)" subject to an "employment loss," as those terms are defined in the WARN Act, 29 U.S.C. § 2101(a)(5) and (6).

14. Plaintiff and class members are "employees" at a "covered establishment" subject to a "mass layoff" and/or "termination" as those terms are defined in the California WARN Act, California Labor Code § 1400(h), (a), (d) and (f), respectively.

15. Plaintiff's claims satisfy the numerosity, commonality, typicality, adequacy and superiority requirements of a class action.

16. The members of the class exceed 100 in number, and joinder is therefore impracticable. The precise number of class members and their addresses are readily determinable from the books and records of Defendants.

17. There are common questions of fact and law as to the class that predominate over any questions affecting only individual class members. The questions of law and fact common to the class arising from Defendants' actions include, without limitation, the following:

- a. Whether the provisions of the WARN Act apply;
- b. Whether Defendants' employee terminations on or about February 23, 2009, and within 30 days thereafter, constitute a "plant closing" "termination" and/or "mass layoff" under the WARN Act;
- c. Whether Defendants failed to provide the notices required by the WARN Act (29 U.S.C. § 2102(b); Cal. Labor Code § 1401);
- d. Whether Defendants can avail themselves of any of the provisions the WARN Act permitting lesser periods of notice;
- e. The appropriate formulae to measure damages under the WARN Act (29 U.S.C. § 2104(a); Cal. Labor Code § 1402); and
- f. The appropriate definitions and formulae to measure payments to potentially offset damages under the WARN Act (29 U.S.C. § 2104(a)(2); Cal. Labor Code § 1402).

18. The questions set forth above predominate over any questions affecting only individual persons, and a class action is superior with respect to considerations of consistency, economy, efficiency, fairness and equity, to other available methods for the fair and efficient adjudication of the WARN Act claims.

19. A class action is the superior method for the fair and efficient adjudication of this controversy. Defendants have acted or refused to act on grounds generally applicable to the class. The presentation of separate actions by individual class members could create a risk of inconsistent and varying adjudications, establish incompatible standards of conduct for Defendants, and/or substantially impair or impede the ability of class members to protect their interests.

20. Plaintiff is an affected employee who was terminated by Defendants on or about February 23, 2009, without the notice required by the WARN Act. He is thereby a member of the class. Plaintiff is committed to pursuing this action and has retained counsel with extensive experience prosecuting complex wage, employment and class action litigation. Accordingly, Plaintiff is an adequate representative of the class and has the same interests as all of its members. Further, Plaintiff's claims are typical of the claims of all members of the class, and Plaintiff will fairly and adequately

1 protect the interests of the absent members of the class.

2 21. Further, class action treatment of this action is authorized and appropriate under the
3 WARN Act (29 U.S.C. § 2104(a)(5); Cal. Labor Code § 1404), which clearly provides that a plaintiff
4 seeking to enforce liabilities under the WARN Act may sue either on behalf of his or her self, for other
5 persons similarly situated, or both.

6 COUNT I

7 Violations of the United States Worker Adjustment and Retraining Notification Act

8 22. Plaintiff reasserts and re-alleges the allegations set forth above.

9 23. At all times material herein, Plaintiff, and similarly situated persons, have been entitled to
10 the rights, protections and benefits provided under the federal WARN Act, 29 U.S.C. § 2101 *et. seq.*

11 24. The federal WARN Act regulates the amount of notice an employer must provide to
12 employees who will be terminated due to the employer's closing of a plant closing or mass layoffs, as
13 well as the back pay and other associated benefits an affected employee is due based on a violation of
14 the required notice period.

15 25. Defendants were, and are, subject to the notice and back pay requirements of the federal
16 WARN Act because it is a business enterprise that employs 100 or more employees, excluding part-time
17 employees, as defined in the Act. 29 U.S.C. § 2101(1)(A).

18 26. Defendants willfully violated the federal WARN Act by failing to provide the required
19 notice.

20 27. Section 2103 of the federal WARN Act exempts certain employers from the notice
21 requirements of the Act. 29 U.S.C. § 2103(1)-(2). None of the federal WARN Act exemptions apply to
22 Defendants. Accordingly, Plaintiff and class members must receive the notice and back pay required by
23 the federal WARN Act (29 U.S.C. § 2102 and 2104).

24 28. Plaintiff and all similarly situated employees have been damaged by Defendants' conduct
25 constituting violations of the federal WARN Act and are entitled to damages for their back pay and
26 associated benefits for each day of the violation because Defendants have not acted in good faith nor
27 with reasonable grounds to believe its acts and omissions were not a violation of the federal WARN Act.

COUNT II

Violations of the California Worker Adjustment and Retraining Notification Act

29. Plaintiff reasserts and re-alleges the allegations set forth above.

30. At all times material herein, Plaintiff, and similarly situated persons, have been entitled to the rights, protections and benefits provided under the California WARN Act, California Labor Code § 1400, *et. seq.*

31. The California WARN Act regulates the amount of notice an employer must provide to employees who will be terminated due to the employer's layoffs, as well as the back pay and other associated benefits an affected employee is due based on a violation of the required notice period.

32. Defendants were, and are, subject to the notice and back pay requirements of the California WARN Act because it is a covered establishment that employs 75 or more employees, excluding part-time employees, as defined in the Act. Cal. Labor Code § 1400.

33. Defendants willfully violated the California WARN Act by failing to provide the required notice.

34. The California WARN Act exempts certain employers from the notice requirements of the Act. None of the California WARN Act exemptions apply to Defendants. Accordingly, Plaintiff and class members must receive the notice and back pay required by the California WARN Act.

35. Plaintiff and all similarly situated employees have been damaged by Defendants' conduct constituting violations of the California WARN Act and are entitled to damages for their back pay and associated benefits for each day of the violation because Defendants have not acted in good faith nor with reasonable grounds to believe its acts and omissions were not a violation of the California WARN Act.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, and all similarly situated employees, demand judgment against Defendants and pray for:

(1) an order certifying that the action may be maintained as a class action under Federal Rule of Civil Procedure 23;

(2) designation of Eric Rubaker as the representative of the class, and counsel of

1 record as Class Counsel;

- 2 (3) compensatory damages in an amount equal to at least the amounts provided by
3 the WARN Act (29 U.S.C. § 2104(a); Cal. Labor Code § 1402(a));
4 (4) reasonable attorneys' fees, costs and disbursements as allowed by the WARN Act
5 (20 U.S.C. § 2104(1)(6); Cal. Labor Code § 1404); and
6 (5) such other relief as the Court deems fair and equitable.

7 **DEMAND FOR JURY TRIAL**

8 Plaintiff hereby requests trial by jury of all issues triable by jury.

9
10 DATED: February 26, 2009

Respectfully submitted,

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12 **GIRARD GIBBS LLP**

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14 By: 

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